

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

KRISTEN PALME
Plaintiff,

v.

WALMART, INC., WAL-MART STORES
TEXAS, LLC
Defendant.

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CIVIL ACTION NO. 5:21-cv-00792

Jury Requested

NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. §§ 1332 AND 1446(A)

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW WALMART, INC. and WAL-MART STORES TEXAS, LLC, Defendants in the above entitled and numbered cause, and file this Notice of Removal of the present cause from the 37th Judicial District Court of Bexar County, Texas, in which it is now pending, to the United States District Court for the Western District of Texas, San Antonio Division, showing the Court as follows:

A. BACKGROUND

1. This action is a civil personal injury lawsuit. This case was commenced by the filing of an Original Petition in Cause No. 2021CI13827 in the 37th Judicial District Court of Bexar County, Texas, on July 11, 2021, wherein Plaintiff named WALMART, INC. and WAL-MART STORES TEXAS, LLC as the Defendants. Pursuant to 28 USC §1446 (a), a copy of the Plaintiff's Original Petition is attached hereto and incorporated herein for all purposes. No other process, pleadings or orders in this matter have been received by Defendants WALMART, INC. and WAL-MART STORES TEXAS, LLC (hereinafter "Defendants") or by its attorneys.

2. Plaintiff filed this civil action against WALMART, INC. and WAL-MART

STORES TEXAS, LLC asserting negligence claims arising from an alleged negligent activity incident which is claimed to have occurred on or about July 11, 2021, while Plaintiff was a patron at Defendants' premises located at 1515 N. Loop 1604 E, San Antonio, Bexar County, Texas. Pl. Orig. Pet. at Sec. IV.

3. Defendants were served with a copy of Plaintiff's Original Petition on July 26, 2021. A copy of the Citation served on Defendant, indicating the date of service, is attached hereto and incorporated herein for all purposes.

4. Defendants filed a responsive pleading in State Court on August 3, 2021, a copy of which is also attached hereto and incorporated herein for all purposes.

B. BASIS FOR REMOVAL

5. Plaintiff resides in Bexar County in the State of Texas. *Id.* at Sec. IV. Plaintiff was at the time of the filing of this lawsuit, and remains, a resident and citizen of the State of Texas.

6. WAL-MART STORES TEXAS, LLC is not a citizen of the State of Texas. WAL-MART STORES TEXAS, LLC was, at the time of the filing of Plaintiff's Original Petition and is at the time of filing of this Notice of Removal, a limited liability company existing under the laws of the State of Delaware with its principal office and residence in Bentonville, Arkansas.

7. WAL-MART STORES TEXAS, LLC has one member, Wal-Mart Real Estate Business Trust. Wal-Mart Real Estate Business Trust was, at the time of the filing of Plaintiff's Original Petition, and is at the time of filing of this Notice of Removal, a Delaware Statutory Trust with its principal office and residence in Bentonville, Arkansas.

8. WALMART, INC. is not a citizen of the State of Texas. WALMART, INC. was, at the time of the filing of Plaintiff's Original Petition and is at the time of filing of this Notice of Removal, a company existing under the laws of the State of Delaware with its principal office and

residence in Bentonville, Arkansas.

9. A corporation is ““a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.”” *MidCap Media Fin., L.L.C. v. Pathway Data, Inc.*, 929 F.3d 310, 314 (5th Cir. 2019) (quoting 28 U.S.C. § 1332(c)(1)). WAL-MART STORES TEXAS, LLC and WAL-MART, INC. are incorporated entities under the laws of the State of Delaware with its principal place of business in Arkansas. Therefore, WAL-MART STORES TEXAS, LLC and WAL-MART, INC. are citizens of Delaware and Arkansas.

10. Complete diversity therefore exists between the adverse parties to this action under 28 U.S.C. §1332(a).

11. Plaintiff’s Original Petition states, “Plaintiff seeks monetary relief over \$1,000,000.00.” Pl. Orig. Pet. at Sec. II. Therefore, the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

12. Upon filing of this Notice of Removal of this cause, written notice of the filing by Defendants to Plaintiff has been provided as required by law. Notice is also being filed with the Clerk of the State Court in which this cause was originally filed.

13. Based upon the foregoing, this Court has original jurisdiction for this matter pursuant to 28 U.S.C. § 1332, complete diversity of citizenship, and the matter is one which may be removed to this Court pursuant to 28 U.S.C. § 1446.

C. REMOVAL IS TIMELY

14. This Notice of Removal is timely filed in accordance with 28 U.S.C. §1446(b), in that it is filed within thirty (30) days of the service of Plaintiff’s Original Petition on Defendants and within one year of the initial filing of the lawsuit.

D. FILING WITH STATE COURT AND NOTICE TO PLAINTIFF

15. Upon filing of this Notice of Removal of this cause, written notice of the filing by Defendants to Plaintiff will be provided as required by law. A copy of this Notice is also being filed with the Clerk of the State Court in which this cause was originally filed. A copy of all processes, pleadings, and orders has been filed separately with this Court pursuant to 28 U.S.C. § 1446(a).

16. Based on the aforementioned facts, the State Court lawsuit may be removed to this Court by Defendants WAL-MART STORES TEXAS, LLC and WAL-MART, INC. in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this action is a civil action pending within the jurisdiction of the United States District Court for the Western District of Texas; (ii) this action is between citizens of different states; and (iii) the amount in controversy exceeds \$75,000, exclusive of interest and costs as specifically plead in the Original Petition.

E. JURY DEMAND

17. Defendants hereby request a trial by jury.

F. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants pray for removal of the above entitled and numbered cause from the 37th Judicial District Court of Bexar County, Texas, in which it is now pending, to the United States District Court for the Western District of Texas, San Antonio Division, based on diversity of citizenship of the parties.

Respectfully submitted,

/s/ Jaime A. Saenz

Jaime A. Saenz

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**ATTORNEYS FOR DEFENDANTS WALMART, INC.
AND WAL-MART STORES TEXAS, LLC**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on this 25th day of August, 2021 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule 5.1(d).

/s/ Jaime A. Saenz